

APPEAL NO. 021666
FILED AUGUST 19, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on May 16, 2002. The hearing officer resolved the disputed issues by concluding that the respondent (claimant) sustained a compensable injury on _____, and has disability, beginning _____, and continuing through the date of the CCH. The appellant (carrier) appeals, arguing that the claimant failed to satisfy his burden of proof to establish that he sustained a compensable injury and suffered disability. The appeal file did not contain a response from the claimant.

DECISION

Affirmed.

The claimant testified that he was operating a weedeater as part of his job duties of general maintenance when he felt a sting on his left leg. However, he testified he was unable to identify the specific cause of the stinging sensation. The record reflected that the claimant had previously been diagnosed with diabetes and had a previous history of spider bites. The claimant testified that he sought medical treatment the day the incident occurred and the record reflects that the claimant later underwent a partial foot amputation. The carrier argues that because "the claimant was unable to identify the creature or insect that he believes stung him," he cannot meet his burden of proof and additionally argues that the claimant failed to prove that he was exposed to a greater risk than the general public.

We have previously held that injuries caused by insect bites or stings can be compensable. See Texas Workers' Compensation Commission Appeal No. 951583, decided November 9, 1995, and the cases cited therein. There was conflicting evidence presented regarding causation. The first doctor to examine the claimant notes a puncture wound apparent over the left calf and there are additional medical records that note the claimant as suffering from cellulitis and an insect bite. The carrier acknowledges in its appeal that prior Appeals Panel decisions do not require the injured worker to identify the particular creature that stung or bit him. There is evidence to support the hearing officer's finding that the claimant's left foot cellulitis and resulting left foot partial amputation was caused, to a degree of reasonable medical probability, by the insect sting or bite he sustained while in the course and scope of his employment.

The hearing officer was also persuaded that the evidence established that the claimant's employment as a general maintenance worker subjected him to elements of nature, and placed him at a higher risk of exposure than the general public to insects and other venomous creatures that inhabit high grass and other brushy areas. See Texas Workers' Compensation Commission Appeal No. 980102, decided March 3, 1998 (Unpublished). The hearing officer was acting within her province as the sole judge of

the weight and credibility of the evidence under Section 410.165(a) in so finding. The hearing officer resolved the conflicts and inconsistencies in the evidence in favor of the claimant. Garza v. Commercial Ins. Co., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). Nothing in our review of the record demonstrates that the hearing officer's determination that the claimant sustained a compensable injury is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Thus, no sound basis exists for us to reverse that determination on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 224 S.W.2d 660 (1951).

The carrier's challenge to the hearing officer's disability determination is dependent upon the success of its argument that the claimant did not sustain a compensable injury. Given our affirmance of the injury determination, we likewise affirm the determination that the claimant had disability beginning _____, and continuing through the date of the CCH.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL
DALLAS, TEXAS 75201.**

Susan M. Kelley
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Philip F. O'Neill
Appeals Judge